

NEBRASKA DEPARTMENT
OF INSURANCE

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

AUG 31 2004

FILED

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| STATE OF NEBRASKA |) | |
| DEPARTMENT OF INSURANCE, |) | |
| |) | FINDINGS OF FACT, CONCLUSIONS OF |
| PETITIONER, |) | LAW, RECOMMENDED ORDER AND |
| |) | ORDER |
| VS. |) | |
| |) | |
| MICHAEL SEGAL, and |) | CAUSE NO. A-1578 |
| |) | |
| NEAR NORTH INSURANCE |) | |
| BROKERAGE, INC., |) | |
| |) | |
| RESPONDENTS. |) | |

This matter came on for hearing on the 11th day of August, 2004, before Martin W. Swanson, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Keri Schechinger. Michael Segal (Respondent Segal) nor any representative(s) on the behalf of Near North Insurance Brokerage, Inc. (Respondent Near North) were present and neither party was represented by an attorney. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Evidence was received, testimony was adduced and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent Segal is licensed as a non-resident insurance producer with the Department. Respondent Segal's registered address with the Department is Near North Insurance Brokerage, Inc., 875 N. Michigan Avenue, 19th Floor, Chicago, IL 60611.

2. Respondent Near North is licensed as an insurance producer with the Department. The registered address for Respondent Near North is 875 N. Michigan Avenue, 20th Floor, Chicago, IL 60611. (E1)

3. Respondent Segal was the designated responsible producer for Respondent Near North, pursuant to Neb. Rev. Stat. § 44-4053(2)(b). (E1)

4. In November 2002, Respondent Segal was indicted by a federal grand jury on charges alleging that Respondent Segal engaged in a scheme involving the illegal and fraudulent diversion of funds from a premium trust fund account. Such charges included seven counts of mail fraud in violation of 18 U.S.C. § 1341; one count of wire fraud in violation of 18 U.S.C. §1343; one count of racketeering in violation of 18 U.S.C. § 1962(c); and seven counts of making false statements to an insurance regulatory agency in violation of 18 U.S.C. § 1033(a)(1). (E3, 5)

5. Respondent Near North also was indicted in November 2002 by a federal grand jury on charges alleging that Respondent Near North engaged in a scheme involving the illegal and fraudulent diversion of funds from a premium trust fund account. Such charges included six counts of mail fraud in violation of 18 U.S.C. § 1341; and seven counts of making false statements to an insurance regulatory agency in violation of 18 U.S.C. §1033(a)(1). Respondent Near North reported that they were named as a defendant in an indictment entitled U.S. Michael Segal, Daniel E. Watkins and Near North Insurance Brokerage, Inc. No. 02 CR 112 on June 12, 2003. This letter was sent to the Department of Insurance on July 18, 2003, and did not indicate that it was written on behalf of Respondent Segal. (E4, 5)

6. According to published reports, written by Sally Roberts in the periodical Business Insurance on June 23, 2004 and June 28, 2004, a federal jury found Respondent Segal guilty on charges relating to the illegal and fraudulent diversion of funds from a premium trust fund account, and included convictions for mail fraud, wire fraud, making false statements, embezzlement, tax conspiracy, and racketeering on or about June 21, 2004. Such convictions involve are four felonies. (E6)

7. According to published reports, written by Sally Roberts, in the periodical Business Insurance on June 23, 2004 and June 28, 2004, Respondent Near North was found guilty on charges relating to the illegal and fraudulent diversion of funds from a premium trust fund account, and included convictions for mail fraud, making false statements, and embezzlement on or about June 21, 2004. Such convictions are for felonies. (E6)

8. On or about November 13, 2002, Respondent Segal's nonresident insurance agent's license in Kentucky was suspended as a result of administrative action commenced against Respondent Segal in that state based on a federal indictment handed down by a federal grand jury in Illinois, charging Respondent Segal with violations of 18 U.S.C. §§1033(a)(1) and (2). (E2)

9. On or about June 17, 2003, Respondent Segal's non-resident insurance producer's license in Vermont was suspended as a result of an administrative action commenced against Respondent Segal in that state based on a federal indictment handed down by a federal grand jury in Illinois, charging Respondent Segal with violations of 18 U.S.C. §§1033(a)(1) and (2); administrative actions in California, Kentucky and Pennsylvania which resulted in the suspension of Respondent Segal's insurance licenses in

such jurisdictions; and Respondent Segal's failure to report such administrative actions within 30 days. (E3)

CONCLUSIONS OF LAW

1. The Department of Insurance is the duly designated agency of the State of Nebraska empowered to exercise jurisdiction and control over the licensing of insurance producers in Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §44-4047 et seq. Said jurisdiction and control have been present at all times material hereto.

2. Neb. Rev. Stat. § 44-4053(2)(b) requires business entities licensed under the Insurance Producers Licensing Act to designate a licensed individual producer to be responsible for its compliance with the insurance laws, rules, and regulations of Nebraska.

3. Neb. Rev. Stat. § 44-4059(1) provides that the director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy an administrative fine in accordance with subsection (4) of this section, or any combination of actions, for any one or more of the following causes:

- (b) Violating any insurance law or violating any rule, regulation, subpoena, or order of the director or of another state's insurance commissioner or director;
- (d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business;
- (f) Having been convicted of a felony or a Class I, II, or III misdemeanor;
- (g) Having admitted or been found to have committed any insurance unfair trade practice, any unfair claims settlement practice, or fraud;
- (h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; or

- (i) Having an insurance producer license, or its equivalent, denied, suspended, placed on probation, or revoked in Nebraska or in any other state, province, district, or territory.

4. Under Neb. Rev. Stat. § 44-4059(3), the license of a business entity may be suspended, revoked, or refused if the director finds, after notice and hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

5. Neb. Rev. Stat. § 44-6604 provides that, for purposes of the Insurance Fraud Act, a person or entity commits a fraudulent insurance act if he or she:

- (4) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;
- (5) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit; or
- (6) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance.

6. Under Neb. Rev. Stat. § 44-4065(1), an insurance producer must report to the director any administrative action taken against the producer in another jurisdiction within thirty days of the final disposition of the matter.

7. Neb. Rev. Stat. § 44-4065(2) requires insurance producers to report to the director any criminal prosecution of the producer taken in any jurisdiction within 30 days of arraignment or date of waiver of arraignment, if waived.

8. Respondents Segal and Near North violated Neb. Rev. Stat. §§ 44-4059(1)(b), (d), (f), (g), (h) as well as Neb. Rev. Stat. §§ 44-6604(4), (5), and Respondent Segal additional violated Neb. Rev. Stat. §44-4059(1)(i).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that both Respondent Segal and Respondent Near North have their respective licenses suspended until their convictions become final. Namely, either when their appeal time expires or their appeals are exhausted and the convictions are sustained. In the event of an appeal, if the convictions are upheld, the Respondent(s) license(s) are revoked. If the conviction(s) are reversed, Respondent(s) may reapply for their respective license(s). Reinstatement shall be subject to the discretion of the Nebraska Department of Insurance.

Dated this 27th day of August, 2004.



Martin W. Swanson, #20795
Hearing Officer
Nebraska Department of Insurance
941 "O" Street, Suite 400
Lincoln, NE 68508
(402) 471-2201


CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the

official and final Order of this Department in the matter of State of Nebraska, Department of Insurance vs. Michael Segal and Near North Insurance Brokerage, Inc., Cause No. A-1578.

Dated this 31st day of August, 2004.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Find of Facts, Conclusion of Law, Recommended Order and Order was served upon Respondents by mailing a copy to Respondent Michael Segal at Near North Insurance Brokerage, Inc., 875 N. Michigan Avenue, 19th Floor, Chicago, IL 60611, and to Respondent Near North Insurance Brokerage, Inc. at 875 N. Michigan Avenue, 20th Floor, Chicago, IL 60611, by certified mail, return receipt requested, on this 1st day of ~~August~~ ^{September}, 2004.

